

Appeal from a decision of the California State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease CA 13933.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:  
Termination

Pursuant to 30 U.S.C. § 188(b) (1982), when the lessee fails to pay the required rental on or before the anniversary date of the lease, and no oil and gas is being produced on the leased premises, the lease shall automatically terminate by operation of law. The Secretary may reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982), if the full rental is paid within 20 days of the lease anniversary date, and the failure to timely pay was justifiable or not due to a lack of reasonable diligence.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:  
Termination

Late payment of annual rental may be considered justifiable if the untimeliness was proximately caused by extenuating circumstances outside the lessee's control at or near the anniversary date. A lessee's failure to timely pay rental is not justifiable where the rental payment was returned by the U.S. Postal Service as undeliverable because the address on the envelope was unreadable. Appellant must bear the consequences of the Postal Service's inability to timely deliver the rental payment.

3. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:  
Termination

Mailing the rental payment after the anniversary date does not constitute reasonable diligence.

APPEARANCES: Neal Hunter, pro se.

## OPINION BY ADMINISTRATIVE JUDGE IRWIN

Neal Hunter has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated November 12, 1984, denying his petition for reinstatement of noncompetitive oil and gas lease CA 13933.

On October 25, 1984, BLM forwarded appellant an oil and gas lease termination notice stating that lease CA 13933 terminated on the anniversary date of the lease, October 1, 1984, for failure to pay the rental in a timely manner. BLM also informed appellant of his right to petition for reinstatement of the lease pursuant to 30 U.S.C. § 188(c) (1982) (Class I reinstatement) and pursuant to 30 U.S.C. § 188(d) (1982) (Class II reinstatement) notice set forth the conditions for reinstatement under both Class I and Class II.

On November 5, 1984, appellant filed a petition for a Class I reinstatement, stating that his first check had been mailed on time but "the envelope, which had been properly addressed with a felt-tipped pen, had somehow become wet in transit and became unreadable," and "was subsequently returned by the post office." He indicated he had mailed the rental payment again and it was received October 15, 1984. BLM denied appellant's petition for Class I reinstatement on the grounds that no evidence had been submitted showing that the first payment was mailed timely but returned by the Postal Service and that the Postal Service was his agent and he must bear the consequences of its failure to deliver the first payment.

In his notice of appeal <sup>1/</sup> appellant states that the circumstances were beyond his control and that he discarded the original damaged envelope when it was returned by the Postal Service in a plastic bag, so he could not provide any proof of its original mailing. He adds:

The U.S. Postal Service has no idea of what happened, where it happened, why it happened, or when it happened. According to the postal inspector, they keep no records of damaged & returned mail: they cannot help me prove that it DID happen.

In explanation of not using the envelope pre-addressed to MMS, he states:

Several notices & bulletins regarding BRASS & MMS & BLM and the transfer of responsibility for issuing courtesy notices and collection of annual rentals were received by me in the months prior to the rental due date. I found these confusing (& I thought they were contradictory). I read & reread them, taking some home for study: papers became separated, and the referenced

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<sup>1/</sup> We note that no copy of the notice of appeal containing appellant's statement of reasons was served on the office of the Department's Regional Solicitor, as required by 43 CFR 4.413. Failure to serve this office within the time required subjects an appeal to summary dismissal, as BLM's decision indicated. 43 CFR 4.402.

self addressed envelope was misplaced. I mailed the rent check in a regular envelope, applying a pressure sensitive return address label. I later discovered the self addressed envelope & missing papers, as I was assembling my files: the self addressed envelope was used for my second rent check submittal.

[1] Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that when the lessee fails to pay rental on or before the anniversary date of the lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law. If the lessee has paid the full rental within 20 days after the lease anniversary date, and the lessee shows that the failure to pay on or before the anniversary date was justifiable or not due to a lack of reasonable diligence, the Department may, under certain circumstances, reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982) and 43 CFR 3108.2-2. Jerry D. Powers, 85 IBLA 116, 118 (1985).

[2] Late payment of an annual rental may be considered justifiable if the untimeliness was proximately caused by extenuating circumstances outside the lessee's control at or near the anniversary date. Larry M. Ferguson, 81 IBLA 167, 169 (1984); William F. Branscome, 81 IBLA 235, 237 (1984). When the failure to pay the annual rental on time is due to negligence, forgetfulness, or inadvertence, the failure is not justifiable. Leo M. Krenzler, 82 IBLA 205, 209 (1984); Eleanor L. M. Dubey, 76 IBLA 177, 179 (1983). Appellant appears to argue that his confusion as to the exact requirements and the disorder of his business papers led to the use of an envelope that was not preaddressed to BLM. A late payment is not justifiable where the lessee neglects to order his business affairs in such a fashion that his lease rental is not paid on time. Leo M. Krenzler, *supra* at 208; Larry W. Ferguson, *supra*. Appellant must bear the consequences of not addressing the envelope indelibly. Moreover, appellant admits he has no explanation for the loss in handling of his rental payment. Unsubstantiated speculation as to errors in handling and processing the payment by the Postal Service is not evidence of extenuating circumstances which will justify the untimely rental. Arthur M. Solender, 79 IBLA 70, 74 (1984).

[3] In the absence of evidence that appellant originally mailed payment before the anniversary date, his mailing the payment after the anniversary date does not constitute reasonable diligence. Leo M. Krenzler, *supra*.

Therefore, BLM properly denied appellant's petition to reinstate the lease under Class I because appellant failed to prove that his failure to timely pay the rental was either justifiable or not due to a lack of reasonable diligence. 43 CFR 3108.2-2(b).

BLM advised appellant in the decision that a denial of the petition for reinstatement under Class I procedures does not prohibit the lessee from petitioning under the Class II reinstatement procedures. However, appellant did not petition for reinstatement under those provisions. Therefore, we need not address that issue.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Will A. Irwin  
Administrative Judge

We concur:

Anita Vogt  
Alternate Member

Wm. Philip Horton,  
Chief Administrative Judge.